

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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KISSINGER N. SIBANDA,	:	
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Plaintiff,,	:	
	:	24-CV-6310 (JMF)
-v-	:	
	:	<u>ORDER</u>
DAVID ELLISON et al.,	:	
	:	
Defendants.	:	
	:	
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JESSE M. FURMAN, United States District Judge:

Plaintiff Kissinger N. Sibanda, a lawyer proceeding *pro se*, alleges that the 2019 movie “Gemini Man” infringes his copyright in a book titled “The Return to Gibraltar.” Sibanda filed similar claims against most of the same parties in an earlier lawsuit. *See Sibanda v. Elison*, No. 23-CV-5752 (JMF). A few months ago, however, the Court granted Defendants’ motions to dismiss that action and to impose sanctions on Sibanda. *See Sibanda v. Elison*, No. 23-CV-5752 (JMF), 2024 WL 3835220 (S.D.N.Y. Aug. 14, 2024). Sibanda is currently appealing those rulings, but in the meantime, he also filed this lawsuit, in which Defendants have now also filed motions to dismiss and for sanctions. *See* ECF Nos. 76, 80. For his part, Sibanda has filed a slew of his own motions, namely (1) a motion to strike Defendants’ motion to dismiss, *see* ECF No. 82; (2) a motion to strike Defendants’ motion to strike a Certificate of Default, *see* ECF No. 87; (3) a motion for sanctions against Defendants, *see* ECF No. 89; (4) a motion to stay pending his appeal in the earlier action, *see* ECF No. 96; (5) a motion to recuse the undersigned, *see* ECF No. 100; and (6) a motion for oral argument, *see* ECF No. 108.

The Court resolves or addresses these motions as follows:

- Sibanda's motions to strike, ECF Nos. 82 and 87, are DENIED in light of the Court's previous ruling that Defendants' motion to dismiss is timely and, thus, that they are not in default. *See* ECF No. 98.
- In light of Defendants' motion to dismiss, *see* ECF No. 76, Sibanda is allowed under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure to amend his Complaint once as a matter of course within twenty-one days. Accordingly, it is hereby ORDERED that Sibanda shall file any amended complaint by **November 25, 2024**. Pursuant to Local Civil Rule 15.1, available at <https://www.nysd.uscourts.gov/rules>, any amended complaint should be filed with a redline showing all differences between the original and revised filings. Sibanda will not be given any further opportunity to amend the complaint to address issues raised by the motion to dismiss. If Sibanda does amend, by three (3) weeks after the amended complaint is filed, Defendant shall: (1) file an answer; (2) file a new motion to dismiss; or (3) file a letter on ECF stating that it relies on the previously filed motion to dismiss. If Defendants file an answer or a new motion to dismiss, the Court will deny the previously filed motion to dismiss as moot. If Defendants file a new motion to dismiss or indicates that it relies on its previously filed motion to dismiss, any opposition shall be filed within fourteen days, and any reply shall be filed within seven days of any opposition. If no amended complaint is filed, Sibanda shall file any opposition to the motion to dismiss by **November 25, 2024**. Defendant's reply, if any, shall be filed by **December 2, 2024**.
- Exercising its broad discretion with respect to case management, the Court will defer consideration of — and further briefing on — both Defendants' motion for sanctions, *see* ECF No. 80, and Sibanda's motion for sanctions, *see* ECF No. 89, until the Court has resolved Defendants' motion to dismiss.
- Sibanda's motion to stay pending appeal of the earlier case, *see* ECF No. 96, is DENIED. To the extent that Sibanda suggests this Court lacks jurisdiction pending that appeal, he is flat wrong — this is a new and different case. Exercising its broad discretion with respect to case management, the Court concludes that there is no reason to await a ruling from the Circuit before considering the pending motions in this case.
- Sibanda's motion for recusal, *see* ECF No. 100, is DENIED as frivolous. The undersigned has no “prior relationship” with defense counsel (or any Defendant). Otherwise, Sibanda's complaints are with the undersigned's decisions as to case management and on the merits; none of those complaints justify recusal.
- Sibanda's motion for oral argument, *see* ECF No. 108, is DENIED as moot.

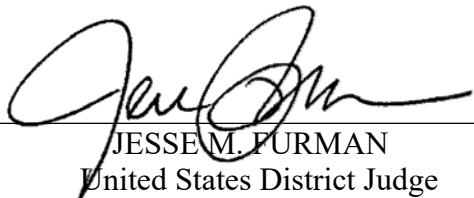
The Court urges Sibanda to focus his energy on responding to Defendants' motion to dismiss, whether by amending his complaint or by filing an opposition, and to cease flooding the docket

with extraneous and/or frivolous filings (which, among other things, only increase the possibility of sanctions being imposed — and, if financial sanctions are ultimately imposed, may only increase the amount of such sanctions).

The Clerk of Court is directed to terminate ECF Nos. 82, 87, 96, 100, and 108.

SO ORDERED.

Dated: November 12, 2024
New York, New York



JESSE M. PURMAN
United States District Judge